

David Davis: A Defender of the Constitution

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Each person has a defining moment, the one time in life which stands out beyond all the rest. For someone who has spent a great deal of time in public service, there may be many of these moments. David Davis was one of those people, serving as a Circuit Court judge, a Supreme Court justice, and a United States Senator, he had many opportunities to display his brilliance. However, during his time on the United States Supreme Court, a landmark case was tried—*Ex parte Milligan*. His association with this case—one of the first that decided the Constitutional protection of civil liberties—has brought him greatness, for he delivered the opinion of the court.

Davis' influence in Illinois began in 1844, when he was elected to the Illinois legislature. Though he had been born in Maryland, Davis earned a law degree from Yale and settled in Bloomington, Illinois with his young wife. There, he established a law practice in 1836, having been admitted to the Illinois bar the previous year. When Davis became a circuit court judge in 1848, he began a lifelong friendship with Abraham Lincoln, with whom he rode the circuit routes. At the Republican convention of 1860, Davis worked tirelessly for Lincoln's nomination. His effort secured Lincoln's election. When Lincoln moved to Washington, D. C., Davis followed and served as an advisor until 1862, at which time Lincoln appointed him to the Supreme Court. It was from this appointment that his shining moment resulted.

The case of *Ex parte Milligan* was concerned with the death sentence of Lambden P. Milligan. During the Civil War, Milligan had been tried by a military court in Indiana for allegedly disloyal activities. He was found guilty and sentenced to death. However, Lincoln granted a stay of execution to Milligan. Following Lincoln's assassination, though, Andrew Johnson permitted the sentence to be carried out. At this point, Milligan's attorney requested his release, but the appeal was delayed by the question of whether civilian courts had jurisdiction over appeals from military courts. When the case passed beyond the federal circuit court, the Supreme Court was given a chance to comment on the extent of the government's powers during war. They decided, though the decision became only a precedent, that military courts could not supersede civil courts in areas where civil courts and the government remained fully open and operational. In this instance, Indiana's courts and government had functioned throughout the war; therefore, the military courts held no authority over the citizens of Indiana.

When Davis delivered the Supreme Court's opinion, he angered many within the Republican party. Davis argued that since Milligan was not a prisoner of war, a resident of a rebellious state, or a member of the military or naval service, the military tribunal never had the authority to punish him. Laws had been made to outline the exact situations under which tribunals could have power, and because those situations did not exist, the tribunal should not have existed either. Moreover, the Constitution provided a trial by jury for all crimes except impeachment. While the Constitution provided for the use of

military courts under circumstances of war, the Civil War never truly existed within Indiana's borders. Additionally, Davis defended Lincoln's suspension of the writ of habeas corpus. It was found that some events relative to national security might warrant that suspension; however, after a citizen was denied habeas corpus, there was no provision for him to be tried other than by the normal courts of law, a civil court. Obviously, the military court had never held authority within the state of Indiana, much less over one of its citizens.

Though the trial of *Ex parte Milligan*, David Davis upheld the Constitutional provisions that protect American citizens and set a precedence to the future. As a citizen of Illinois, he brought greatness to a young state and to himself, securing American democracy. Davis truly was one of Illinois' stars. [From U. S. Department of State, "Basic Reading in U.S. Democracy: Ex parte Milligan (1866)", www.usinfo.state.gov/usa/infousa/facts/democrac/26.htm (Nov. 13, 2004).]